

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
v.) Criminal No. 03-245
)
FREDERICK H. BANKS)

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
DOCUMENTS 633, 636, 637 AND 638**

AND NOW, comes the United States of America, by and through David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Robert S. Cessar, Assistant United States Attorney for said district, and respectfully files the following Response:

The government will use its best efforts to respond to the defendant's instant pleadings. However, portions are illegible, unintelligible and nonsensical and if the court requires the government to submit an additional response to the defendant's arguments, the government will request an opportunity to do so.

Document 633

Document 633, which the defendant captions "Preserved Objections to Revocation Proceedings; and Motion to Dismiss; and Notice of Future Appeal and pro se Informal Brief of Appellant" is a bazaar document. As far as the government can tell, this document is a brief that the defendant intends to file in the

Court of Appeals for the Third Circuit at some future date after the revocation proceeding in this matter. As such, this document is in legal "limbo" as it has not been filed in the Third Circuit and is based upon an action that has not yet occurred. Accordingly, the government will not respond at this time but will do so after the revocation proceeding or at the time of a properly filed pleading with the Third Circuit.

Document 636

Document 636 is captioned "Motion to Disqualify U.S. Attorney's Office ... and Reply to Petition to Withdraw as Counsel" is again, in part, in legal "limbo". A large part of the motion is a reply to the withdrawal of Attorney Patrick Nightingale as standby counsel. Pursuant to order of this court on August 19, 2014, Mr. Nightingale withdrew as counsel and Donna J. McClelland was appointed as standby counsel. Thus, the portion of defendant's reply relating to Mr. Nightingale is moot as the court has already ruled on the motion.

In Document 636, the defendant seeks to turn 200 years of legal jurisprudence on its head by alleging that the United States Attorney's Office for the Western District of Pennsylvania had no authority to prosecute him, based upon his reading of the United States Constitution, statute and case law. 28 U.S.C. § 541(a) sets forth that the president shall appoint a United States Attorney for each judicial district, such as the

Western District of Pennsylvania. The United States Attorney, is the chief federal law enforcement official for the district in which he serves and is responsible for prosecution of all offenses against the United States within his/her district. Nadler v. Mann, 951 F.2d 301 (11th Cir. 1992).

The argument that the United States consists only of the District of Columbia, federal territories and federal enclaves has been repeatedly rejected by the courts as frivolous. See United States v. Cooper, 170 F.3d 691, 691 (7th Cir. 1999); United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994); In re Becroft, 885 f.2d 547, 549-50 (9th Cir. 1989); United States v. Ward, 833 F.2d 2538, 1539 (11th Cir. 1987).

The defendant also attempts to use Document 636 to reply to his prior counsel's petition to withdraw. The reply is moot as the court already has granted the petition.

Document 637

Document 637, which the defendant captions "Motion, and Supplement to Revocation Motion to Vacate Under 28 USC section 2255", is, like document 633, in legal "limbo." As far as the government can decipher, Banks is seeking a resentencing in this case, in which he has never been held in violation of his supervised release or sentenced thereon, based upon alleged errors in Criminal Number 04-176. There is simply no way for the government to respond to actions in this case which have not

even occurred. The government will respond, unless otherwise directed by the court, at the appropriate time.

Document 638

Document 638 is captioned "Motion to Dismiss and for Bail & Arraignment Transcripts" and seeks dismissal of the instant supervised release petition on the grounds that Magistrate Judge Cynthia Eddy should have been disqualified from handling the defendant's arraignment under 28 U.S.C. § 455. The basis of the disqualification purportedly was: 1) Judge Eddy's representation of a witness in the grand jury proceeding and trial underlying his conviction in which an FBI agent allegedly pointed a gun at the alleged witness during an interview and Judge Eddy allegedly informing the witness to stop dating him; and 2) Judge Eddy was a prospective witness in a civil case.

As an initial matter, defendant's fanciful, unproven and spurious grounds, even if raised in a timely manner, which they were not, do not warrant a disqualification of Judge Eddy under any provision of Section 455(b). Judge Eddy is a respected member of this Court and is fully cognizant of her ethical and judicial obligations. Moreover, Section 455 does not provide the remedy the defendant seeks, namely dismissal of the supervised release petition or bond. Judge Eddy simply presided over the defendant's arraignment. She did not authorize the petitions for supervised release, which were signed by this

Court. Moreover, Judge Eddy handled the arraignment; Magistrate Judge Baxter handled the defendant's original bail hearing.¹ Accordingly, Document 638 should be denied.

Conclusion

All of defendant's filings are part of a pattern by this defendant to make false, frivolous, unwarranted and, quite frankly, defamatory allegations and argument which are not supported by any facts. The Court should exercise its supervisory authority to limit such false and frivolous filings² and/or require Banks to provide factual support for his allegations other than his bald assertions or pedantic ravings.

Respectfully submitted,

DAVID J. HICKTON
United States Attorney

s/ Robert S. Cessar
ROBERT S. CESSAR
Assistant U.S. Attorney
PA ID No. 47736

¹ Defendant seeks a transcript of the arraignment proceeding. These proceedings are not transcribed but are audio recorded. The burden is on the defendant to request and pay for the transcription, not the government.

² Banks has committed fraud on the Court in a motion he filed in the United States District Court for the Southern District of New York, in which he forged the signature of defendant, Bernard L. Madoff, in criminal number 09-213. (See Exhibits A and B)